

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA**

**COMPANION PROPERTY AND CASUALTY, )  
GROUP, a South Carolina corporation, )**

**Plaintiff, )**

**vs. )**

**SKY HIGH SPORTS, LLC, a Nevada limited )  
liability company; SKY HIGH SPORTS )  
ORANGE COUNTY OPERATIONS, LLC, )  
a Nevada limited liability company, et al. )**

**Defendants. )**

**3:12-cv-00595-HDM-VPC**

**MINUTES OF COURT**

**PROCEEDINGS: JURY TRIAL (DAY FIVE)**

**PRESENT:**

**THE HONORABLE HOWARD D. McKIBBEN, SENIOR U.S. DISTRICT JUDGE**

**Deputy Clerk: Paris Rich Reporter: Kathryn French**

**Counsel for Plaintiff: Gina Mushmeche and Jordan Schnitzer**

**Counsel for Defendants: Day Williams and Natalia Vander Laan**

At 8:15 a.m., the Court convenes.

On behalf of the Plaintiff, Gina Mushmeche and Jordan Schnitzer are present with Claims Specialist Josh Shettle.

On behalf of the Defendants, Day Williams and Natalia Vander Laan are present with Jerry Raymond and Ron Raymond, Owners of Sky High Sports, LLC and Sky High Sports Orange County Operations, LLC ("Sky High Defendants").

The Court and counsel discuss the proposed jury instructions and verdict forms.

At 8:39 a.m., the jury enters the courtroom.

JERRY RAYMOND, called on behalf of the Defendants, is sworn, examined on direct by Mr. Williams, cross-examined by Mr. Schnitzer, and released subject to recall.

At 9:19 a.m., the jury is admonished and excused.

Outside the presence of the jury, Mr. Schnitzer broadcasts YouTube videos for review by the Court, Witness J. Raymond, and counsel.

The Court states the broadcast of the YouTube videos shall be allowed for demonstrative purposes only.

At 9:25 a.m., the Court stands at recess.

At 9:34 a.m., the Court reconvenes with all parties and the jury present.

JERRY RAYMOND, resumes the witness stand, is further cross-examined by Mr. Schnitzer (YouTube videos are broadcast for demonstrative purposes), examined on redirect by Mr. Williams, examined on re-cross by Mr. Schnitzer, and excused.

The Defendants rest.

The Plaintiff rests.

The Court addresses the jury regarding the remaining trial schedule.

At 9:48 a.m., the jury is admonished and excused.

Outside the presence of the jury the Court's addresses the parties' motions on claims and proposed jury instructions.

Mr. Williams recites motions and argument for the dismissal of the Plaintiff's intentional misrepresentation claim and the Plaintiff's claim for breach of the implied covenant of good faith and fair dealing. Mr. Schnitzer presents responsive arguments.

The Court recites findings with respect to the parties' claims for the breach of the implied covenant of good faith and fair dealing.

**IT IS ORDERED, the Defendants' motion for dismissal of the Plaintiff's claims for breach of the implied covenant of good faith and fair dealing is GRANTED.**

**IT IS FURTHER ORDERED, the Defendants' claim for breach of the implied covenant of good faith and fair dealing shall go forward to the jury.**

The Court recites findings with respect to the Plaintiff's intentional misrepresentation claim.

**IT IS ORDERED, the Defendants' motion for dismissal of the Plaintiff's intentional misrepresentation claim is GRANTED.**

The Court addresses the Plaintiff's independent negligence claim and states the Plaintiff's claim is more appropriately negligent misrepresentation.

The Court further addresses and identifies the parties' surviving claims. The Court and counsel discuss and number the proposed jury instructions.

The parties confirm they have no objection to the jury instructions the Court intends to give in this matter.

Mr. Schnitzer recites the Plaintiff's proposed jury instruction as rejected by the Court this date. The jury instruction is marked as the Plaintiff's Jury Instruction No. 1 and provided to the Courtroom Clerk for filing.

Mr. Williams recites the Defendants' proposed jury instruction as rejected by the Court this date. The jury instruction is marked as the Defendants' Jury Instruction No. 1 and provided to the Courtroom Clerk for filing.

The Court addresses the proposed verdicts. Counsel have no objections to the form of the verdicts.

Counsel stipulate to the jury instructions and verdicts being settled in open Court.

Ms. Mushmeche recites the Plaintiff's FRCP 50 motion for a directed verdict. **IT IS ORDERED, the Plaintiff's motion is DENIED.**

Mr. Williams recites the Defendants' FRCP 50 motion on the Defendants' breach of contract claim. **IT IS ORDERED, the Defendants' motion is DENIED without prejudice.**

At 10:09 a.m., the Court stands at recess.

At 10:25 a.m., the Court reconvenes with all parties and the jury present.

The Court instructs the jury.

Ms. Mushmeche presents closing argument on behalf of the Plaintiff.

At 11:28 a.m., the jury is admonished and excused. The Court stands at recess.

At 11:37 a.m., the Court reconvenes with all parties and the jury present.

Mr. Williams presents closing argument on behalf of the Defendants.

Ms. Mushmeche presents rebuttal argument on behalf of the Plaintiff.

The Court recites explanatory statements to the jury regarding the remaining trial process.

Court Security Officers Paul Canuelle and David Depaoli are sworn to take charge of the jury.

At 12:10 p.m., the jury retires for deliberation.

Outside the presence of the jury, the Court advises counsel to remain within 10 minutes of the courtroom.

At 12:11 p.m., the Court stands at recess subject to call of the jury.

At 3:49 p.m., outside the presence of the jury, the Court convenes with counsel and the parties to discuss a note from the jury. Counsel stipulate to the response the Court will provide to the jury.

At 3:53 p.m., the jury enters the courtroom. Counsel stipulate to all the jurors present.

The Court recites a response to the jury as to Jury Note No. 1.

At 3:56 p.m., the jury retires for further deliberation.

The Court stands at recess subject to call from the jury.

At 4:47 p.m., the Court convenes with all parties present. The Court states it has been advised the jury has reached a verdict.

The jury enters the courtroom. Counsel stipulate to all the jurors present.

The jury foreperson indicates the jury has reached a verdict.

The Verdicts are published by the Courtroom Clerk.

On behalf of the Defendants, Mr. Williams requests a polling of the jury as to the Special Verdict.

The Court polls the jury and finds Special Verdict is unanimous.

**IT IS ORDERED, as to Plaintiff Companion's negligent misrepresentation claim against Defendants Sky High, Judgment is entered in favor of the Plaintiff and against the Defendants in the amount of \$8,000,000.00 with sixty percent (60%) negligence attributable to Defendants Sky High and forty percent (40%) negligence attributable to Plaintiff Companion. IT IS SO ORDERED.**

**IT IS FURTHER ORDERED, as to Defendants Sky High's claim of breach of the implied covenant of good faith and fair dealing, Judgment is entered in favor of Plaintiff Companion and against Defendants Sky High. IT IS SO ORDERED.**

**IT IS FURTHER ORDERED, as to Defendants Sky High's claim of breach of contract, Judgment is entered in favor of Plaintiff Companion and against Defendants Sky High. IT IS SO ORDERED.**

The Court confirms it will meet with counsel to discuss attributable calculations and any equitable issues following discharge of the jury.

The Court thanks and excuses the jury for a period of two years.

The Court addresses and resolves the equitable claims with counsel.

The Court restates the Judgments, as recited earlier this date.

With respect to the Special Verdict, the Court discusses the reduction to the Judgment for comparative negligence and offsets or adjustments in connection with the settling defendants. Counsel is granted leave to file the appropriate motions in connection with the issue.

**IT IS ORDERED, the Plaintiff shall prepare a proposed Judgment consistent with the findings of the Court.**

The Court addresses the Plaintiff's [282] Motion for Attorneys' Fees and Costs. The Court recites findings.

**IT IS ORDERED, the Plaintiff's [282] Motion is GRANTED in part and DENIED in part. The Plaintiff's motion with respect to attorneys' fees is DENIED. The Plaintiff's motion with respect to costs is GRANTED in part. IT IS FURTHER ORDERED, Defendants Sky High shall pay to Plaintiff Companion the sum of \$4,515.96 for the reasonable costs associated with the continuance of the Jury Trial from May 2015 to September 2015.**

The parties confirm there are no other matters before the Court to be resolved at this time.

The Court thanks and recites complimentary comments to counsel.

At 5:07 p.m., the Court adjourns.

LANCE S. WILSON, CLERK

By: /s/ Paris Rich  
Deputy Clerk